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PATENT LEGAL STAFF
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER NY 14650-2201

In re Application of
David Wilkins, et al.
Application No. 09/546,932
Filed: April 11, 2000
For: **TECHNIQUES FOR ACQUIRING
A PARENT MULTIMEDIA ASSET
(DIGITAL NEGATIVE) FROM ANY OF
A PLURALITY OF MULTIPLY
MODIFIED CHILD MULTIMEDIA
ASSETS**

This is a decision on the petition for revival filed under 37 C.F.R. §1.137(b), October 4, 2004 which is treated as Petition to Withdraw the Holding of Abandonment pursuant to 37 C.F.R. §1.181. No fee is required.

The petition is **GRANTED**.

The application was abandoned for failure to respond in a timely and effective manner to the non-final Office action mailed November 3, 2003. A Notice of Abandonment was mailed on September 20, 2004.

Petitioner asserts that a proper response was timely filed on February 2, 2004. In support of the petition, Petitioner has submitted, a copy of a transmittal letter, Applicant's reply, a power of attorney letter and a date-stamped post card receipt that references an amendment and power of attorney.

The original correspondence filed was not matched with the application file and cannot be located. However, M.P.E.P. § 503 states, “[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

37 C.F.R. § 1.8 Certificate of mailing or transmission, states in part:

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

Paper No. 13

MAILED

DEC 03 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

- (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
 - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
- (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

Petitioner has successfully demonstrated the receipt of papers in the U.S. PTO. However, the post card receipt was date-stamped as having been received in the Office on February 4, 2004, which is after the set shortened statutory time period for response. There is no certificate of mailing on the amendment or transmittal letter which references the amendment and power of attorney letter. There is only a certificate of mailing on the power of attorney letter which is insufficient to satisfy the requirements under 37 C.F.R. §1.8, certificate of mailing. Therefore, applicant's response was not considered to have been filed until February 4, 2004, wherein applicant was required to petition for a one month extension of time.

37 C.F.R § 1.136(a)(3) Extensions of time, states:

- (3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission. [emphasis added]

Applicants checked the box within the transmittal letter which states "The Commissioner is hereby authorized to charge any additional appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 05-0460." Therefore, a one month extension of time has been charged in order for the response to be considered as having been timely filed.

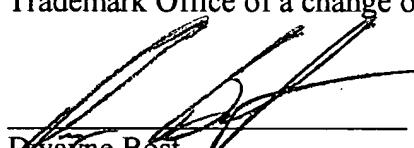
In view of the above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

With respect to the power of attorney letter, the associate power of attorney and change of correspondence address is denied. A decision on November 28, 2003 granting withdraw of all attorneys of record was mailed. This decision specifically noted that NO Attorneys/Agents remained of record. If applicant desired appointment of representation, a properly executed Power of Attorney must be filed. Given that there was no attorney of record and no power of

attorney has subsequently been filed by applicant, then Frank Pincelli does not have the apparent authority to appoint associate powers of attorney or change correspondence addresss.

The application file will be forwarded to the Technology Center's technical support staff for entering the copy of the response submitted with the petition and for refunding the petition fee of \$1370.00 given that this decision is based on a 37 C.F.R. §1.181. No fee is required. From there, the file will be forwarded to the examiner for further examination in due course.

A courtesy copy of this decision is being sent to the improperly requested change of correspondence address listed below. However, all future communications will continue to be sent to the address listed above until such time as applicant properly notifies the U.S. Patent and Trademark Office of a change of address.



Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

Cc: Pamela R. Crocker
Eastman Kodak Company
Patent Legal Staff
Rochester, New York 14650-2201